

MICHAEL J. GARCIA  
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Southern District of New York  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

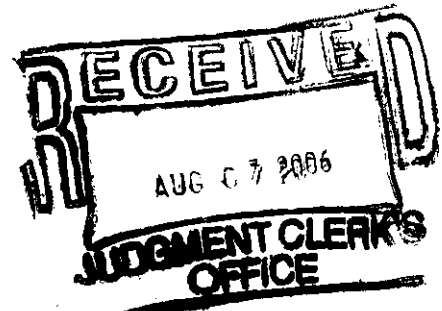
Plaintiff, :

- against - :

THE NEW YORK CITY TRANSIT  
AUTHORITY, :

Defendant. :

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STIPULATION AND ORDER  
OF SETTLEMENT AND DISMISSAL

04 Civ. 732 (LAP)

WHEREAS, on January 30, 2004, plaintiff United States of America (the "Government") commenced this action, pursuant to 42 U.S.C. § 7413(b) of the Clean Air Act, by filing a summons and complaint (the "Complaint") alleging that defendant The New York City Transit Authority (the "TA") violated Sections 82.156(i)(5), 82.156(i)(9) and 82.166(k) of the Stratospheric Ozone Protection regulations set forth at 40 C.F.R. Part 82, subpart F (the "Stratospheric Ozone Protection regulations"), by failing within the specified time period to repair air conditioning units on subway cars in order to prevent leakage of ozone-depleting chlorofluorocarbons and by failing to keep servicing records for such units;

WHEREAS, on March 24, 2004, the TA filed an Answer denying the material allegations of the Complaint;

WHEREAS, the TA does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint;

WHEREAS, on April 23, 2004, the Court issued a Case Management Order providing for bifurcated discovery and limiting the first phase of the litigation to two issues, one of which was whether the R62 and R62A subway car classes contain air conditioning units that “normally contain[.]” more than 50 pounds of refrigerant within the meaning of 40 C.F.R. § 82.156(i)(5);

WHEREAS, after the United States took discovery with respect to this issue, it agreed to dismiss any allegations in the Complaint relating to the air conditioning units on the TA’s R62s and R62As;

WHEREAS, as a result, the only subway cars that remained subject to the litigation were the TA’s “Redbird” cars, which the TA represents have been retired from passenger service;

WHEREAS, the United States therefore finds that no injunctive relief is necessary in settling this action; and

WHEREAS, the United States and the TA agree that settlement of the United States’ claims against the TA, without further litigation, is in the public interest;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned parties, as follows:

1. This Court has jurisdiction over the parties to, and the subject matter of, this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and Section 113(b) of the Act, 42 U.S.C. § 7413(b). The United States gave notice of the commencement of the action to the New York

State Attorney General pursuant to 42 U.S.C. § 7413(b). Venue is proper in this district under Section 113(b) of the Act, 42 U.S.C. § 7413(b), 28 U.S.C. §§ 1391(b) and (c), and 1395(a).

2. Within sixty (60) calendar days of the date it receives (a) notice that this Stipulation and Order has been entered by the Court and (b) specific written payment instructions as specified in paragraph 3 below, the TA shall pay to the United States a civil penalty in the amount of one hundred sixty five thousand dollars (\$165,000).

3. The payment shall be made by FedWire Electronic Funds Transfer ("EFT") in accordance with current electronic funds transfer procedures, referencing USAO File No. 2002V00417, EPA Docket No. CAA 02-2001-0021, and DOJ Case No. 90-5-2-1-07681. The payment shall be in accordance with specific written instructions provided to the TA by the United States Attorney's Office for the Southern District of New York. Any EFT received at the DOJ lockbox bank after 11:00 a.m. Eastern Time will be credited on the next business day. Within five (5) business days of payment, the TA shall provide written notice of payment and a copy of any transmittal documentation to the United States Attorney's Office, EPA, and DOJ at the addresses below:

As to the United States Attorney's Office  
for the Southern District of New York:

Heidi A. Wendel  
Assistant United States Attorney  
United States Attorney's Office  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, New York 10007

As to DOJ:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

As to EPA:

Evans Stamatakis, Esq.  
Assistant Regional Counsel  
Region 2  
U.S. Environmental Protection Agency  
290 Broadway  
New York, New York 10007

4. If the civil penalty is not fully paid when due, the TA shall pay a stipulated penalty of one thousand dollars (\$1,000) per day for each day that the payment is delayed beyond the due date. Further, the TA shall pay interest on the overdue amount, from the original due date to the date of payment, at the statutory judgment rate in accordance with 28 U.S.C. § 1961. The TA shall also be liable for attorneys' fees and costs incurred by the United States to collect any amount due under this Stipulation and Order.

5. Payment of the civil penalty by the TA pursuant to this Stipulation and Order shall constitute full settlement and satisfaction of the claims asserted by the United States in this action and as alleged in the Complaint. The United States dismisses with prejudice its claims which could be construed to allege (a) that the TA's R62 and/or R62A subway car classes have air conditioning units with a normal charge of more than 50 pounds of regulated refrigerants and (b) that the TA's maintenance, repair and recordkeeping with respect to the Redbird subway cars violated the Stratospheric Ozone Protection regulations.

6. If subsequent to the date of this Stipulation and Order the TA changes its maintenance manuals such that the R62 and/or R62A subway car classes are to be operated with more than 50 pounds of regulated refrigerant, the release provided by the United States in paragraph 5 above shall not apply to the affected subway car class in connection with violations alleged to have occurred after the date of such policy change. The United States reserves, and

this Stipulation and Order is without prejudice to, all rights against the TA with respect to all other matters not asserted by the United States in the Complaint, including, but not limited to, any criminal liability.

7. Each party to this Stipulation and Order shall bear its own legal and other costs incurred in connection with this matter, except as provided in paragraph 4 above.

8. This Stipulation and Order shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Stipulation and Order disclose facts or considerations indicating that the Stipulation and Order is inappropriate, improper, or inadequate, and if the United States exercises this right, then this Stipulation and Order is null and void. In the event that the United States does not withdraw or withhold its consent pursuant to this paragraph, the TA consents to entry of this Stipulation and Order without further notice.

9. Each undersigned representative of the TA, the United States Attorney's Office, and the Environmental Enforcement Section of the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Stipulation and Order and to execute and legally bind the party he or she represents to this document.

FOR PLAINTIFF UNITED STATES OF AMERICA:

Dated: *August 3*, 2006

MICHAEL J. GARCIA  
United States Attorney for the  
Southern District of New York

By: \_\_\_\_\_  
HEIDI WENDEL (HW- 2854)  
Assistant United States Attorney  
86 Chambers Street - 3<sup>rd</sup> Floor  
New York, New York 10007  
Tel.: (212) 637-2769

Dated: *July 21*, 2006

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ELLEN MAHAN, Deputy Chief  
United States Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section  
P.O. Box 7611  
Washington, D.C. 20044-7611

FOR PLAINTIFF UNITED STATES OF AMERICA:

Dated: *August 3*, 2006

MICHAEL J. GARCIA  
United States Attorney for the  
Southern District of New York

By: \_\_\_\_\_  
HEIDI WENDEL (HW- 2854)  
Assistant United States Attorney  
86 Chambers Street - 3<sup>rd</sup> Floor  
New York, New York 10007  
Tel.: (212) 637-2769

United States v. The New York City Transit Authority, Stipulation and Order

Dated: Aug 2, 2006

ERIC SCHAAF  
Regional Counsel  
United States Environmental  
Protection Agency, Region 2

By: EVANS STAMATAKY  
Assistant Regional Counsel  
United States Environmental  
Protection Agency, Region 2  
290 Broadway  
New York, New York 10007  
Tel. (212) 637-3201



United States v. The New York City Transit Authority, Stipulation and Order

Dated: *June 27*, 2006

BRYAN CAVE LLP  
Attorney for Defendant The New York City Transit  
Authority *1, 1, 12*

By:

\_\_\_\_\_  
PHILIP E. KARMEL (PK-2706)  
1290 Avenue of the Americas  
New York, NY 10104  
Tel. No.: (212) 541-2311

SO ORDERED:

\_\_\_\_\_  
United States District Judge